

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DAVID and CHRISTINE GIERLINGER,

Plaintiffs,

v.

DECISION AND ORDER  
13-CV-370

TOWN OF BRANT, et al.,

Defendants.

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The instant matter was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 42 U.S.C. §636(b)(1) for supervision of all pre-trial proceedings. Plaintiffs sued the Town of Brandt and several Town officials pursuant to Sections 1983 and 1985 of Title 42 of the United States Code. Defendants moved to dismiss the complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. No. 9) Plaintiffs then cross-moved to amend the complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure. (Dkt. No. 19) Magistrate Judge McCarthy issued a Report and Recommendation recommending that defendants' motion be granted and that plaintiffs' cross-motion to amend be granted in part and denied in part. (Dkt. No. 24)

Plaintiffs filed objections to Magistrate Judge McCarthy's Report and Recommendation. (Dkt. No. 25) Defendants filed a response on October 23, 2014, (Dkt. No. 27), at which time the Court considered the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the submissions from the parties, the Court hereby adopts Magistrate Judge McCarthy's findings in their entirety.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendants' motion to dismiss the complaint is granted, and plaintiffs' cross-motion for leave to amend the complaint is granted to the extent the first cause of action alleges a Section 1983 claim for malicious prosecution, in violation of the Fourth Amendment, and the fourth cause of action alleges a state law malicious prosecution claim, but otherwise is denied.

The matter is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: January 21, 2015